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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/505,310	04/20/2005	Graham Kalazich	201423-9004	6012

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EXAMINER

ARK, DARREN W

ART UNIT PAPER NUMBER

3643

DATE MAILED: 07/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/505,310	Applicant(s) KALAZICH, GRAHAM	
	Examiner Darren W. Ark	Art Unit 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*; 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 100-102 and 104-143 is/are pending in the application.
- 4a) Of the above claim(s) 104-143 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 100-102 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Claims 104-143 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected Group and Species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 12/7/2005.
2. Applicant's election with traverse of Group I, Species I in the reply filed on 12/7/2005 is acknowledged. The traversal is on the ground(s) that "Group I, Species I corresponds with claims 100-105 (Figures 1-5)...claim 106...claims 107-110...has a linking relationship with Group I, Species I...in addition to Group I, Species VI (Figures 6-7) to which the Office Action contends claim 106 belongs...shaded areas of FIG. 1...correspond to the 'plurality of rings in series...' of claim 106...", "method claims 111-115...have been amended to mirror claims 100-110 and, therefore claims 111-115 having a linking technical relationship with Group I, Species I...being essentially limited to methods for making the apparatuses recited in claims 100-106", and "In the case at hand...has not alleged that there would be an undue burden on the Examiner if restriction were not required...". This is not found persuasive because it is clear from applicant's specification that the interpretation of Fig. 1 as having a "plurality of rings in series" similarly to what is shown in Figs. 6 and 7 is incorrect since at specification page 7, lines 21-24 it states "...sleeve 10...plurality of apertures in the form of holes are defined in the sock sleeve as shown". There is no discussion with regard to the

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embodiment that there are rings defined between the rows of holes. With regard to applicant's argument that amending claims 111-115 so as to have similar limitations to claims 100-110, the Examiner contends that the process would be examined and included with elected Group I, Species I if the process is specially adapted for the manufacture of the product of Group I, Species I and if it **inherently** results in the product of Group I, Species I. Thus, a process shall be considered to be specially adapted for the manufacture of the product if the claimed process inherently results in the claimed product with the technical relationship being present between the claimed product and claimed process. In this instance, although the technical relationship may exist, the claimed process for manufacture of the product does not inherently result in the claimed product since the process could result in the manufacture of other products, such as protective coverings for tips of fingers such as a flexible thimble or sexual products such as condoms. In regard to applicant's argument that examination of Groups I and II together would not result in undue burden on the Examiner, the Examiner contends that examination of claim 111 for instance would result in additional burden on the Examiner to further search Class 264 Plastic and Nonmetallic Article Shaping or Treating Processes with subclass 632, defined for producing hollow article (e.g. tube, etc.) and subclass 635, defined for utilizing core mandrel (under subclass 632) as being the starting point of a search required by the Examiner in additional Class 264.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 100-103 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Wyatt 6,871,442.

Wyatt discloses a resiliently deformable receptacle including a hollow body member (10, 12 made of expandable plastic) with an open end (14) and a parabolic shaped closed end (16 or 700); a plurality of apertures (openings in mesh).

5. Claims 100-103 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Hudson 4,961,280.

Hudson discloses a resiliently deformable receptacle including a hollow body (10, pouch 26 made of transparent porous plastic or rubber like material) with an open end (34) which is reinforced (with 38 having 42, 46) and a parabolic shaped closed end (32); a plurality of apertures (28).

6. Claims 100-103 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Jay 2,839,866.

Jay discloses a resiliently deformable receptacle with a hollow body (10) with an open end (generally at 20) which is reinforced (at 22) and a parabolic shaped closed end (at 30 which is curved in a form similar to a parabola); a plurality of apertures (mesh).

7. Claims 100-103 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Romaniszyn et al. 4,984,582.

Romaniszyn et al. discloses a resiliently deformable receptacle (20; the bait is not being positively recited as part of the desired invention therefore the Romaniszyn et al. patent is capable of receiving bait as functionally recited) with an open end (22) which is reinforced (24, 26, 28) and a closed end (30); a plurality of apertures (5).

8. Claims 100-103 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Benjamin 4,846,197.

Benjamin discloses a resiliently deformable receptacle (10; the bait is not being positively recited as part of the desired invention therefore the Benjamin patent is capable of receiving bait as functionally recited) with an open end (at 16) which is reinforced (16) and a closed end (15); a plurality of apertures (20).

9. Claims 100-103 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Vadnais 2,225,089.

Vadnais discloses a resiliently deformable receptacle (6 made of rubber; the bait is not being positively recited as part of the desired invention therefore the Vadnais patent is capable of receiving bait as functionally recited) with an open end (at top of 12) which is reinforced (via 14) and a closed end (bottom of 6); a plurality of apertures (8).

Response to Arguments

10. Applicant's arguments filed 6/20/2006 have been fully considered but they are not persuasive.

In regard to applicants' argument that "Wyatt... Figures 10 and 10A of this reference as showing a generally parabolic-shaped closed end... mesh does not have a 'perforated or grid-like formation' of apertures that are configured 'along a length of the body member'...", the Examiner contends that Wyatt does indeed disclose a parabolic shape closed end in Figs. 10 and 10A since the head of the lure (700) is clearly shown to have a rounded shape at the front wherein the top and bottom surfaces merge to form the very end of the lure and therefore meets the language of a parabolic shaped closed end. Also the openings in the mesh of Wyatt are positioned along the length of the body member and are arranged in perforated and a grid-like formation since the terms "perforated or grid-like formation" does not particularly claim a specific aperture configuration not being shown or disclosed by Wyatt.

In regard to applicants' argument that "Hudson... does not disclose the closed end of the pouch is not generally parabolic in shape...", the Examiner directs applicants' attention to Figures 1 and 2 of Hudson.

In regard to applicants' argument that "Jay does not disclose the bag is resilient... closed end... not unitary with the bag...", the Examiner contends that Jay discloses parts of the bag being resilient such as the rubber band (16) and closure member (18) is made of very elastic rubber therefore there are at least portions of the bag which are made so as to be resilient. The Examiner also contends that the closed

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end is unitary with the bag since the entire assembly functions together when holding the bait therein.

In regard to applicants' argument that "Romaniszyn...the outer wall has no apertures, the applicator would be unsuitable for use as a bait holding apparatus...", the Examiner contends that the Romaniszyn patent reads on the claims as recited and that a method of holding bait inside an apparatus is not being particularly recited as argued.

In regard to applicants's argument that "Benjamin...closed end...not generally parabolic in shape...The openings do not have a 'perforated or grid-like formation'...", the Examiner contends that the closed end of Benjamin is generally parabolic shaped since it is curved to meet at a point similar to a parabola and that the apertures represent perforations since they allow communication from within the body to the outside.

In regard to applicants' argument that "Vadnais...closed end is bulbous...perforations 8 do not have a 'perforated or grid-like formation'...", the Examiner contends that the closed end is parabola shaped since there are two sides that curve to meet at one point and that the perforations are perforations arranged in a grid-like formation as shown in Fig. 1.

Conclusion

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Studer 3,936,373 discloses a receptacle (1) with an open end (3), and a parabolic closed end (2) and a plurality of apertures (5, 10). Levey 2,207,672 discloses a receptacle (13) with an open end (15) and a parabolic closed end (12, 16) and a plurality of apertures (14). Adams 4,127,222 discloses a receptacle (10) with an open end (22), and a parabolic closed end (24) and a plurality of apertures (21).

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darren W. Ark whose telephone number is (571) 272-6885. The examiner can normally be reached on M-F, 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Darren W. Ark
Primary Examiner
Art Unit 3643

DWA